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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/853,422	05/09/97	HULSE	J 75657

LEYDIG VOIT & MAYER
180 NORTH STETON
TWO PRUDENTIAL PLAZA/SUITE 4900
CHICAGO IL 60601-6780

33M1/0109

EXAMINER	
DAWSON, G	
ART UNIT	PAPER NUMBER
3309	3
DATE MAILED:	01/09/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary	Application No. 08/853,422	Applicant(s) Hulse et al
	Examiner Glenn Dawson	Group Art Unit 3309

Responsive to communication(s) filed on Jul 31, 1997

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-8 and 11-20 is/are rejected.

Claim(s) 9 and 10 is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

GLENN K. DAWSON
PRIMARY EXAMINER

Glenn K. Dawson

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,4,6-8 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by NEWARD-’944. NEWARD discloses a vacuum extractor having a cup 26 of one material and a lip 30,36 of another softer material. The cup is attached to a handle.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3,5 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over NEWARD-’944. NEWARD discloses the invention as claimed with the exception of the cup being transparent and the length of the lip extension. The amount of lip extension, given the disclosed parameters of the liner thickness, is deemed to be slightly thinner than that claimed. However, the difference is not believed to be inventive. To make the bead 32 of the lip .2 inches

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in length or thickness would have been an obvious design choice. It is also considered to be an obvious design choice to make the wall of the cup transparent. Since the material of which the cup is made, and the thickness of the material, would probably produce a cup being translucent, it nevertheless would have been obvious to make the cup transparent so that the physician could see the extent of skull deformation due to the vacuum pressure during withdrawal.

6. Claims 11-13, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over NEWARD-’944 in view of NEWARD-’086. NEWARD-’944 discloses the invention as claimed with the exception of the ribs and the material of the liner being polyethylene. NEWARD-’086 discloses making the material of the cup polyethylene and using ribs to reinforce the cup. It would have been obvious to make the material of the liner, which seals with the infants skull, out of polyethylene as this material is soft while providing a good material for sealing under vacuum pressure. It would have been obvious to provide the vacuum cup of NEWARD-’944 with reinforcing ribs in order to provide the soft cup with reinforcement to better withstand the vacuum pressure during extraction.

7.

Allowable Subject Matter

8. Claims 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Glenn Dawson at telephone number (703) 308-4304. Examiner Dawson can normally be reached on Monday through Thursday from 7:00 AM to 5:30 PM, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, examiner Dawson's supervisor, MICHAEL BUIZ, can be reached at (703) 308-0871. The fax number for Group 3300 is (703) 305-3590 or 3591.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group 3300 receptionist at (703) 308-0858.

GKD
January 5, 1998

GLENN K. DAWSON
PRIMARY EXAMINER
Glenn Dawson